DOCKET NO. NNH-CV15-6054684-S	:	CONNECTICUT SUPERIOR COURT
CRYSTAL HORROCKS, ET AL	:	JUDICIAL DISTRICT OF NEW HAVEN
v.	:	AT NEW HAVEN
KEEPERS, INC., ET AL	:	MARCH 17, 2020

SECOND APPLICATION TO CONFIRM ARBITRATION AWARD

Plaintiffs Crystal Horrocks, et al, file this second application seeking a final order confirming the final arbitration award in favor of Plaintiffs as against Defendant Keepers, Inc. and Defendant Joseph Regensburger.

After Plaintiffs won an initial determination of liability, Plaintiffs filed a preliminary application to confirm arbitration award July 19, 2019 (JIS #114.00). Plaintiffs made appropriate service (JIS #116.00, August 14, 2019). The court continued the matter multiple times, and ultimately until March 31, 2020 (JIS #122.00, January 22, 2020).

Shortly thereafter, Defendant Regensburger filed a Chapter 13 petition for bankruptcy with the United States Bankruptcy Court for the District of Connecticut, which he filed notice of with this court January 27, 2020 (JIS #123.00). Defendant Regensburger voluntarily withdrew that petition February 20, 2020, and the Bankruptcy Court dismissed the petition February 25, 2020. (See JIS #124. 00).

Plaintiffs simultaneously herein move for a termination of stay of proceedings based on the dismissal of the bankruptcy petition. (JIS #124.00).

With a final judgment on the merits of Mr. Regensburger's Chapter 13 petition, arbitrator Hon. Robert Holzberg (Ret.) issued his final decision as to damages, dated March 17, 2020. A

ORAL ARGUMENT REQUESTED
NO TESTIMONY REQUIRED

true and correct copy of this Amended Decision is attached herein as Exhibit 1. In this ruling, Judge Holzberg awarded Plaintiffs the following dollar amounts:

Crystal Horrocks	$ 32,328.50
Jacqueline Green	$ 32,807.20
Dina Coviello	$ 7,437.75
Sugeily Ortiz	$ 17,490.00
Yaritza Reyes	$ 13,497.30
Zuleyma Lopez	$ 5,000.00
Dalynna Seoung	$ 5,000.00
Total:	$113,560.75

Judge Holzberg, based on his finding of liability in July 2019, also awarded Plaintiffs' undersigned counsel attorneys' fees of $85,000.00 and costs of $2,981.16.

Plaintiffs herein move this court to confirm this award and a complete and final judgment in the amounts listed above, and more specifically enumerated and explained in Judge Holzberg's attached ruling, Exhibit 1.

Plaintiffs move that Court finalize the award as to liability (JIS #114.00) at the same time it enters this damages award.

Wherefore, the Plaintiffs pray:

1) That these awards as to liability and damages be confirmed.
2) That an order be issued directing the defendants to appear on a day certain to show cause, if any be there, why this application should not be granted.

Dated at Hartford, CT, March 17, 2020.

PLAINTIFFS,

CRYSTAL HORROCKS ET AL

BY:

_____/s/_____

Their attorneys
Kenneth Krayeske, Esq. for
Kenneth J. Krayeske Law Offices
255 Main Street, Fifth Floor
Hartford, CT 06106
Phone: 860-969-4911
Fax: 860-760-6590
email: attorney@kenkrayeske.com
Juris # 437545

A. Paul Spinella, Esq.
Spinella & Associates
One Lewis Street
Hartford, CT 06103
Juris #: 413617
Tel: 860 728 4900
Fax: 860 728 4909
attorneys@spinella.law.com

PROPOSED ORDER

Upon the foregoing Application seeking confirmation of the arbitrators' award referred to therein, it is hereby ordered that a hearing on the application be held before this court at the courthouse in New Haven on _____ 2020 at _____ a.m./p.m. and that the Defendants to having filed a written appearance in the above-captioned matter and having appeared to defend the claims set forth in the above captioned matter appear at that time and place, then there to show cause, if any there be, why the application should not be granted.

Dated at New Haven, Connecticut, this ___ day of _____, 2020.

BY THE COURT (, J.)

_____
Judge/Clerk/Assistant Clerk

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was emailed or mailed, via First Class Postage of the United States Postal Service on this 17th day of March, 2020 to:

Pellegrino Law Firm
475 Whitney Avenue
New Haven, CT 06511

A.Paul Spinella, Esq.
Spinella & Associates
One Lewis Street
Hartford CT 06103

_____/s/_____
Kenneth J. Krayeske, Esq.

DOCKET NUMBER NNH-CV15-6054684-S	:	SUPERIOR COURT
CRYSTAL HORROCKS, ET AL.	:	J.D. OF NEW HAVEN
VS.	:	AT NEW HAVEN
KEEPERS, INC., ET AL	:	MARCH 17, 2020

CORRECTED ARBITRATION DAMAGES AWARD

The original Arbitration Damages Award of March 12, 2020 for plaintiffs Zulema Lopez and Yaritza Reyes were calculated incorrectly. As detailed on pp. 18-19 of this Corrected Arbitration Damages Award, the modified award for Ms. Lopez is $5,000.00 and the modified award for Ms. Reyes is $13,497.30. The corrected total award for all plaintiffs, therefore, is $113,560.75 plus $85,000.00 in attorneys' fees and costs of $2,981.16.

Plaintiffs are a group of women dancers who performed at defendants' gentlemen's club, where they made their earnings by performing on-stage and in private "VIP" rooms for male patrons. Plaintiffs' compensation consisted of fees set by the defendants and tips provided by the customers.[1] The defendants are Keepers, Inc., the gentlemen's club which employed the plaintiffs, and the President of Keepers, Inc., Joseph Regensburger.[2]

I. Background

The preliminary question in this dispute was resolved by an award on July 18, 2019, in which the undersigned determined that the plaintiffs are employees of the defendants, subject to the Fair Labor Standards Act (FLSA) 29 U.S.C. § 201, *et seq*. and Connecticut

[1] The nature and amount of the fees and tips received by the plaintiffs is discussed more fully in Section II, *infra*.

[2] Mr. Regensburger filed a Chapter 13 bankruptcy petition on January 2, 2020. It was dismissed on February 25, 2020.

Labor Law, Connecticut General Statutes § 31-58, *et seq*. What remains to be assessed is the amount of damages to be awarded to each of the individual plaintiffs.

The plaintiffs argue that the defendants violated the Connecticut wage and hour laws, and the FLSA's equivalent overtime, minimum wage, and record-keeping requirements, and are entitled to be compensated for the hours they worked at the then prevailing minimum wage plus punitive damages as a result of the defendants' willful violation of State and Federal statutes. The plaintiffs seek the award of: 1) lost wages and fees paid to Keepers, Inc.; 2) punitive damages; and 3) attorneys' fees.

The defendants object to the award of any damages. They argue that: 1) the plaintiffs' evidence of damages is too speculative to constitute a basis for an award; 2) that it would constitute unjust enrichment for the plaintiffs to retain their tips and also be awarded wages; 3) that under the terms of the parties' contract, all tips collected and retained by the plaintiffs for their work must be credited towards any wages owed; and 4) that they have not willfully violated any state or federal laws and therefore are not subject to punitive damages and attorney's fees.

II. The Entertainment Lease Agreement

a. Illegality of the Contract

As an initial matter, the defendants' argument that the terms of the parties' contract entitle them to full wage credit for all entertainment fees earned by the plaintiffs is futile. The contract is void and unenforceable given that its inherent purpose is to avoid statutory wage and hour requirements. Parente v. Pirozzoli, 87 Conn. App. 235 (2005). It is well-settled that a Connecticut court will not "lend its assistance in any way toward carrying out the terms of a contract, the inherent purpose of which is to violate the law." (Internal quotation marks omitted; citations omitted.) Id. at 246. "[A]greements contrary to public policy, that is those

that negate laws enacted for the common good, are illegal and therefore unenforceable. Contractual rights arising from agreements are subject to the fair exercise of the power of the state to secure health, safety, comfort or the general welfare of the community." (Internal quotation marks omitted; citations omitted.) Id. "[A]greements that are legal on their face, yet are designed to evade statutory requirements, are routinely held unenforceable." Id.[3] Because I conclude that the plaintiffs are employees, not merely lessors of space, and the so-called Entertainment Lease Agreement is unenforceable as an attempt to circumvent state and federal wage and hour laws, the defendants cannot cherry pick those provisions of the lease that are advantageous to them.

b. Terms of the Contract

Pursuant to the contractual terms of the Lease Agreement, certain fees were imposed on the plaintiffs as a condition of their ability to work at Keepers. If the plaintiffs did not pay these fees, they were not able to work.

i. House Fees

According to the defendants, the relationship between the parties is dictated by the terms of the so-called Entertainment Lease Agreement (the "Lease"). The Lease requires the plaintiffs to "pay rent" according to a graduated fee schedule, ranging from $20 to $100, which the plaintiffs were required to pay at the door of defendants' club as a condition of starting their shift. Failure to pay rent constitutes a material breach under the terms of the Lease. In addition to the fees paid at the door, plaintiffs are also required to pay the DJ a separate fee after every shift. According to plaintiffs' testimony, the average cost of these fees (collectively "house fees") to them ranged from $20 to $60 for each shift. Testimony

[3] In a suit between exotic dancers and the gentlemen's club that employed them, involving facts which this Arbitrator finds to be analogous to the ones in this matter, Arbitrator Albert Zakarian invalidated a similar Entertainment Lease agreement as unlawful and unenforceable because its "inherent purpose" was to "violate the law." D'Antuono v. C & G of Groton, et al., AAA No. 11-160-02069 (June 17, 2013) (Zakarian, A.).

revealed that there were day shifts and night shifts, with an average shift ranging from six to eight hours, depending on what time a dancer came in. Dancers who arrived past the scheduled start of their shift were subject to pay a higher fee, which fee increased the later the arrival time.

ii. Entertainment Fees

The defendants' club established a "fixed fee for the price of certain performances . . . (referred to as 'Entertainment Fees')." See Paragraph 13. Testimony revealed that these "certain performances" were those known colloquially as "lap dances". Distinct from the fees collected for "lap dances", the club also imposed fees for performances in more secluded areas (referred to colloquially as VIP rooms). These fees are paid by the customers. For example, a "lap dance" would cost a customer on average $25, which the plaintiffs kept. For performances in VIP rooms, the club collected some portion of a club-imposed fee as a "rental fee" and the plaintiffs retained whatever the patron paid in excess of the rental fee, apparently in the form of tips by patrons to the plaintiffs once in the secluded area. In bold text underneath the Lease's entertainment fees provision is a representation that the parties acknowledge that "entertainment fees are neither tips nor gratuities but are [sic] mandatory service charge to the customer for obtaining services at the premises." Id. The Lease also conditions the plaintiffs' right to "obtain and [sic] keep entertainment fees [sic] pursuant to this agreement . . . [sic] upon the business [sic] relationship of the parties being other [sic] than that of employer and employee." Id. Pursuant to the lease terms, if a court, tribunal, arbitrator or government agency were to find that the parties were in an employer-employee relationship entitling the plaintiffs to wages, the entertainment fees would constitute gross income to the club. In that event, the plaintiffs would be required to reimburse the club all entertainment fees received, and such fees would be deemed service charges entitling the

club to full wage credit for whatever wages the plaintiffs are deemed to have earned. See Paragraph 14C.

iii. Nonpayment of Wages and Benefits

The Lease's provisions purport to prohibit the creation of an employer-employee relationship. The Lease specifies that plaintiffs are not to be paid an hourly wage or overtime pay, reimbursed for business expenses, nor provided any employee-related benefits including workers' compensation or unemployment benefits. See Paragraph 14A. In the event of a finding that the plaintiffs are employees, plaintiffs are to receive the hourly minimum wage, without benefits, and entitled to retain tips "*but not* Entertainment Fees." (emphasis in original) Paragraph 14B.

iv. Recordkeeping

There is little provision for recordkeeping under the Lease. The plaintiffs are responsible for maintaining "accurate daily records of all income, including tips." Paragraph 6E. The defendants' record-keeper Randi England testified that there are gaps in the defendants' records of the plaintiffs' hours of work and payment of fees. The incompleteness and gaps in the defendants' records are the result of a combination of factors.[4]

c. The Enforceability of the Lease

In the July 18, 2019 interim award, I concluded that the plaintiffs were employees of the defendants' club and were therefore entitled to the protections and benefits provided to employees by state and federal laws. Under both Connecticut and federal law, employees are entitled to receive a minimum wage for hours worked as well as overtime pay. Conn. Gen. Stat. §§ 31-58, 60; 29 U.S.C. §§ 206, 207. The Lease agreement between the parties in this dispute does not provide for the payment of hourly wages or overtime pay to the

[4] A more thorough discussion of the mechanics of the defendants' recordkeeping practices is discussed in Section V of this decision.

plaintiffs, unless it is determined that an employment relationship exists. It is well established that the attempt to transform an employer-employee relationship into another type of status such as lessor-lessee is illegal and a violation of both State and Federal wage-hour laws and renders the contract itself unenforceable. Parente, 87 Conn. App. at 245 (holding that any agreement formed with the purpose of violating state laws is contrary to public policy and cannot be enforced).

Employers in Connecticut are prohibited from demanding, requiring, requesting, receiving or exacting "any refund of wages[5], fee, sum of money or contribution from any person, or deduct any part of the wages agreed to be paid, upon the representation or the understanding that [such payments are] necessary to secure employment or continue in employment." Conn. Gen. Stat. § 31-73(b). In other words, an employer cannot require an employee to pay rent in order to work. As plaintiffs point out in their brief, there are numerous provisions in the Lease which contravene this rule. Paragraph 2, which provides for the payment of rent, and Paragraph 17 which calls for a distribution of the entertainment fees, requires the plaintiffs to distribute sums of money from their earnings to the club. The payment of House fees, including payment to the DJ, were mandatory requirements if the plaintiffs wanted to work. See Paragraphs 6 and 19. These Lease requirements constitute illegal refund of wages for furnishing employment under Connecticut law. Conn. Gen. Stat. § 31-73, and as such, render the lease and its terms unenforceable. This conclusion is in accord with the decision of another arbitrator who assessed a different lease agreement containing similar provisions, including terms which required exotic dancers to pay a shift

[5] "refund of wages" means: "(1) The return by an employee to his employer or to any agent of his employer of any sum of money actually paid or owed to the employee in return for services performed or (2) payment by the employer or his agent to an employee of wages at a rate less than that agreed to by the employee or by any authorized person or organization legally acting on his behalf." Conn. Gen. Stat. § 31-73(a).

fee or "rent" after each set or shift at which they performed, in violation of Connecticut law. D'Antuono v. C & G of Groton, et al., AAA No. 11-160-02069 (June 17, 2013) (Zakarian, A.).

Defendants attempt to justify the Lease through the common law principle that parties are free to contract for whatever terms on which they may agree. Holiday Hill Holdings v. Lowman, 226 Conn. 748, 755 (1993). This argument is unavailing since the inherent purpose of the Lease is to evade the state and federal statutory prohibitions against making an end run around an employer-employee relationship by characterizing it as a lease. The parties cannot contract to accomplish a goal which is prohibited by law. Parente, 87 Conn. App. 235 (2005). Agreements formed or "made to facilitate, foster, or support patently illegal activity . . . [are] illegal as against public policy." (Internal quotation marks omitted; citations omitted.) Id. at 250.

Further evidence of the Lease's improper purpose are the contingency provisions which seek to hold the plaintiffs accountable for all entertainment fees collected by them while working at the club in the event that they are found to be employees and not independent contractors. See Paragraph 14B-C. If the plaintiffs are employees and not independent contractors, the Lease calls for the reimbursement to the club of all entertainment fees by the plaintiffs, and the assessment of such fees as service charges entitling the club to full wage credit for all fees retained by the plaintiffs. See Id. These provisions effectively penalize the plaintiffs for being found to be employees and serve to discourage dancers from asserting their employee status. The deterrent effect of these provisions becomes apparent in the face of the plaintiffs' testimony that they made more money through tips than they would have made if they were paid hourly minimum wages. There is also no contingency provision which provides for the reimbursement of House fees

paid to the club by the plaintiffs for rent or to the DJ, further evidencing the punitive nature of these provisions.

Accordingly, it is clear that the inherent purpose of the Lease is to avoid the obligations of employers to their employees established by Connecticut and federal employment law. The Lease's contingency provisions which apply in the event of an employer-employee relationship also serve to discourage dancers from asserting their right to challenge their employment status. For these reasons, I find that the Lease is unlawful and unenforceable. Even though the contract is unenforceable as against public policy, I nevertheless review the different contractual provisions relied upon by the defendants.

III. Credit for Tips or Service Charges

a. The Tip Credit Requirements

Section 3(m) of the FLSA permits an employer to take a tip credit towards its minimum wage obligation for tipped employees. An employer must strictly adhere to the statutory notice requirements if it wants to claim the credit. Hart v. Rick's Cabaret Int'l, Inc., 967 F. Supp. 2d 901, 934 (2d Cir. 2013). Employers must provide advance oral or written notice to tipped employees of the use of the tip credit before claiming it. 29 C.F.R. § 531.59(b). Such notice requires employers to provide their employees with certain enumerated disclosures.[6] That an employer may have "had no occasion to address the tip-credit treatment with its dancers upon hiring" because it mischaracterized employees as independent contractors is not a defense to its failure to provide the required disclosures. Rick's Cabaret Int'l, Inc., 967 F. Supp. 2d at 933.

[6] These disclosures include: "The amount of the cash wage that is to be paid to the tipped employee by the employer; the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and that the tip credit shall not apply to any employee who has not been informed of these requirements in this section." 29 C.F.R. § 531.59(b).

The defendants argue that FLSA section 3(m) tip credits may be claimed towards the minimum wage obligation. Under the facts of this case, I conclude that the defendants are not entitled to credit for tips received by the plaintiffs under the FLSA. Even if the Lease were enforceable, the proper statutory procedures were not followed. The record in this case is clear that the defendants failed to provide the required statutory notice to the plaintiffs that defendants would be claiming tip credit.

The only mention in the Lease of the treatment of tips as credit towards wages is in Paragraph 14 which provides that, contingent on a finding that the plaintiffs are employees and not independent contractors, all entertainment fees would be deemed service charges entitling the defendants to credit for all fees retained by the plaintiffs. This provision is deficient under the FLSA, which requires an enumerated list of disclosures which the employer must give to a tipped employee before the tip credit can be taken by the employer. *See* n. 6. Having failed to adhere to section 3(m)'s disclosure requirements, the defendants cannot now claim the tip credit they seek.

b. Service Charge Credit Requirements

The Department of Labor regulations implementing the FLSA distinguish a "tip" from a "service charge." While a tip is a gift or gratuity for some service performed (29 C.F.R. § 531.52), a service charge is a "compulsory charge for service . . . imposed on a customer by an employer's establishment." 29 C.F.R. § 531.55(a). Service charges are not considered tips when they are included in the employer's gross receipts for purposes of the FLSA. 29 C.F.R. § 531.55(b). "Services charges must be distributed *by the employer* in order to count toward wages." (emphasis in original) Rick's Cabaret Int'l, Inc., 967 F. Supp. 2d at 929; 29 C.F.R. § 531.55(b). The expectation is that such services are to be distributed by the employer out of its gross receipts since it serves to advance the FLSA's goal that

employees are paid. Rick's Cabaret Int'l, Inc., 967 F. Supp 2d at 929. This process of "[r]equiring that service charges pass through the employer's gross receipts guarantees that the employer takes responsibility for its employees' wages." Id.

In Rick's Cabaret Int'l, Inc., supra, the defendant gentlemen's club which employed the plaintiff dancers argued that the performance fees it charged patrons should have been counted towards its wage obligations. The performance fees were paid to dancers by patrons for each personal dance, and for any performance in a secluded area in the club. Id. at 927. The fees were fixed non-negotiable charges set by the defendant-employer, and patrons could tip dancers more, but pay no less, than the fixed fee set. Id. The club argued that these fees were mandatory service charges, not tips, and under the FLSA, could be used to offset the club's duty to pay minimum wage. Id. The court disagreed, holding that because the performance fees were not recorded in gross receipts and were not distributed to the plaintiffs by the club, that they could not be used to offset the defendants' wage obligations. Id. at 929.

The defendants in this case point to Paragraph 13 of the Lease to support their assertion that the entertainment fees should be deemed service charges entitling them to full wage credit for fees retained by the plaintiffs. The defendants' argument is without merit. The Entertainment fees earned by the plaintiffs cannot be considered "service charges" under the FLSA and cannot be used to satisfy the defendants' wage obligations. As in Rick's Cabaret Int'l, Inc., 967 F. Supp. 2d at 929-32, the record in this case does not support a finding that the entertainment fees garnered by the plaintiffs were recorded in the club's gross receipts. In her testimony, Ms. England testified that the club did not keep a record of the gratuities earned by the plaintiffs, evidencing the fact that the entertainment fees are not

service charges under the FLSA. Therefore, the defendants are not entitled to credit for that portion of fees the plaintiffs collected and retained from patrons for personal performances.

IV. Statute of Limitations

The next issue in this matter is whether the two-year statute of limitations[7] limits the plaintiffs' recovery to the years April 2013 through April 2015. The plaintiffs insist that the limitation period should be extended back to 2012 due to the "willful" misconduct of the defendants. "A willful violation means that the employer knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute." Id. (internal quotation marks and citations omitted). A plaintiff must show "more than that defendant should have known it was violating the law. Should have known implies a negligence or reasonable person standard. Reckless disregard, in contrast, involves actual knowledge of a legal requirement, and deliberate disregard of the risk that one is in violation." Rick's Cabaret Int'l, Inc., 967 F. Supp. 2d at 937-38. "Mere negligence or unreasonableness on the part of the employer is insufficient." (Citations omitted; internal quotation marks omitted) Id. at 937.

In this matter the defendants sought legal advice and were counselled that the Lease Agreement complied with relevant laws. The fact that advice is inconsistent with this award does not render such recommendations as having been made in bad faith. I conclude that the record does not support a finding of reckless regard by the defendants of the relevant laws. Accordingly, plaintiffs' claims are limited to the two-year period from the date the complaint was served upon the defendants[8] on April 14, 2015 back to April 14, 2013.

V. Damages

[7] Under Connecticut wage laws the statute of limitations for claims is two years. Conn. Gen. Stat. § 52-596. Under federal law, the statute of limitations is also two years for an FLSA claim, and in the event of a willful violation, three years. 29 U.S.C. § 255(a).

[8] There is discrepancy in the pleadings as to the start date of the statute of limitations period. I find that the statute of limitations window runs back two years from the date of service of the Writ, Summons and Complaint upon the defendants by State Marshal Richard A. Orr on April 14, 2015.

a. Recordkeeping Obligations

State and Federal laws also require defendants to keep and maintain wage and hour records for each employee. Employers in Connecticut are required to keep a true and accurate record of hours worked and wages paid to each employee for a period of three years at the place of employment. Conn. Gen. Stat. § 31-66. Federal law requires employers subject to the FLSA, such as the defendants, to maintain and preserve payroll records and information about each employee, including their workweek schedule, overtime hours, and earnings. 29 C.F.R. §§ 516.2, 516.5-6. The parties stipulate that defendants never provided them any documentation or information which would reflect that such requisite records were kept. The plaintiffs' testimony did not refer to any practice of recordkeeping of hours worked or money earned on their part.

b. Factual Basis for Calculation of Damages

The defendants claim that there was a check-in process for the plaintiffs at the start of each shift. This process entailed the photocopying of the identification card of each dancer at check-in onto a sheet of paper, which would serve as a time stamped "punch card." From this de facto "punch card" the administrative staff would derive information from it to produce a daily business recap onto a master listing produced for each day of business which also included information unrelated to employee records, such as the sales of liquor, which was then kept in binders. Defendants' record keeper Randi England testified it was the practice of the business to discard the "punch cards" after the daily business recap was produced. Both parties also testified that after some time, a biometric clock-in system was later implemented in which the plaintiffs would enter their fingerprints before starting their shifts. Ms. England testified that the early records for this biometric system do not exist due to a system malfunction. Nonetheless, the defendants argue that the damages sought by

the plaintiffs are too speculative, and that the employer has the right to present evidence of the precise amount of work performed or to negate the reasonableness of the inference to be drawn from the employee's evidence. Reich v. SNET, 121 F.3d 58, 69 (2d Cir. 1997).

The plaintiffs conversely argue that the defendants' records are violative of wage and hour law, and thus the plaintiffs are entitled to an adverse inference and allowed to substitute their own testimony about their hours worked.

I conclude that the defendants' record keeping was inadequate and incomplete. Accordingly, in calculating plaintiffs' damages I have necessarily relied on both the plaintiffs' testimony and the partial records of the defendants. *See*, Kuebel v. Black & Decker, Inc., 643 F.3d 352, 362 (2d Cir. 2011) ("an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.") (Citation omitted; internal quotation marks omitted.); Reich v. SNET, 121 F.3d at 69 ("the burden shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence . . . . Should the employer fail to produce such evidence, the court may award damages, even though the result is only approximate.") (Citation omitted; internal quotation marks omitted.).

c. Calculation of Damages

Having concluded that the two-year statute of limitations applies to the claimants in this case, the next issue is assessment of damages for the years April 14, 2013- April 14, 2015 for each of the individual plaintiffs. As previously noted, this assessment is made difficult by the absence of complete and reliable records in the possession of the defendants and by the understandable reality that the plaintiffs themselves do not have accurate records

of the dates and hours they performed at Keepers. Despite these limitations the law recognizes that a trial court or arbitrator retains the responsibility to calculate as accurately as possible, based on all of the available evidence, the hours of employment of the claimants. *See*, Kuebel, 643 F.3d 352, 362 (2d Cir. 2011) ("where the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes . . . [t]he solution . . . is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work, as such a result would be contrary to the remedial nature of the FLSA.") (Citations omitted; internal quotation marks omitted.). I note that the claims of the plaintiffs and defendants are wildly conflicting and are not subject to reconciliation. In arriving at the following awards, I note that in many instances the plaintiffs' trial testimony was inconsistent with certain aspects of their deposition testimony. I also note that the failure of the defendants to create and/or maintain accurate records also creates legitimate questions of its credibility. Accordingly, the following awards are entered as to the plaintiffs.

Crystal Horrocks

Despite her claim that in 2013 and 2014 she worked 48 hours per week, I conclude that she worked on average 30 hours per week, none of which involved overtime. I conclude that her period of employment was from October 30, 2013 to the date her complaint was served on April 14, 2015. Applying a "straight-line" calculation of 30 hours per week multiplied by the then minimum wage for each of the years in question the following damages are calculated:

Wages:

2013 30 hours per week for 9 weeks at $8.25 per hour	$ 2,227.50
2014 30 hours per week for 46 weeks at $8.70 per hour	$12,006.00
2015 30 hours per week for 15 weeks at $9.10 per hour	$ 4,095.00
Total Wages	$18,328.50

House and DJ Fees:

2013 36 shifts

2014 184 shifts

2015 60 shifts

280 shifts worked with $50 in fees paid per shift[9]

Total Fees	$14,000.00
TOTAL DAMAGES:	$32,328.50

[9] I conclude that the average fees assessed by the club per shift for each dancer is $50.

Jacquelyne Green

I conclude that Ms. Green worked on average 24 hours per week. I conclude that the period of Ms. Green's employment which falls within the statute of limitations period is April 14, 2013 to January 30, 2015.[10] Applying a "straight-line" calculation of 24 hours per week multiplied by the then minimum wage for each of the years in question the following damages are calculated:

Wages

2013	
24 hours per week for 37 weeks at $8.25 per hour	$ 7,326.00
2014	
24 hours per week for 52 weeks at $8.70 per hour	$10,857.60
2015	
24 hours per week for 4 weeks at $9.10 per hour	$ 873.60
Total Wages	$19,057.20

House and DJ Fees

2013 111 shifts

2014 152 shifts

2015 12 shifts

275 shifts worked with $50 in fees paid per shift

Total Fees	$13,750.00
TOTAL DAMAGES:	$32,807.20

[10] Testimony and evidence submitted by Ms. Green demonstrate that she started work before April 14, 2013. However, since the statute of limitations only extends back to April 14, 2013 in this case, the calculation of her damages for wages and fees owed begins on April 14, 2013.

Dina Coviello

I conclude that Ms. Coviello worked on average 15 hours per week, for 35 weeks in 2013, and 30 weeks in 2014. I conclude that her period of employment which falls within the statute of limitations period is April 14, 2013[11] to May 7, 2013, that she took a break from employment at Keepers and resumed work again from August 2013 to March 2014, a total period of 33 weeks. Applying a "straight-line" calculation of 15 hours per week multiplied by the then minimum wage for each of the years in question, the following damages are calculated:

Wages:

2013 15 hours per week for 25 weeks at $8.25 per hour	$3,093.75
2014 15 hours per week for 8 weeks at $8.70 per hour	$1,044.00
Total Wages	$4,137.75

House and DJ Fees:

2013 50 shifts

2014 16 shifts

66 shifts worked with $50 in fees paid per shift

Total Fees	$3,300.00
TOTAL DAMAGES:	$7,437.75

Yaritza Reyes

I conclude that Ms. Reyes worked on average 18 hours per week. I conclude that her period of employment which falls within the statute of limitations period was from

[11] Testimony and evidence submitted by Ms. Coviello demonstrate that she started work before April 14, 2013. However, as with Ms. Horrocks, the calculation of her damages for wages and fees owed begins on April 14, 2013.

April 14, 2013[12] to February 28, 2014. Applying a "straight-line" calculation of 18 hours per week multiplied by the then minimum wage for each of the years in question the following damages are calculated:

Wages

2013	
18 hours per week for 37 weeks at $8.25 per hour	$ 5,494.50
2014	
18 hours per week for 8 weeks at $8.70 per hour	$ 1,252.80
Total Wages	$ 6,747.30

House and DJ Fees

2013 111 shifts

2014 24 shifts

135 shifts worked with $50 in fees paid per shift

Total Fees	$ 6,750.00
TOTAL DAMAGES:	$13,497.30

Sugeily Ortiz

I conclude that Ms. Ortiz worked on average 40 hours per week. I conclude that her period of employment which falls within the statute of limitations period was from April 14, 2013[13] to December 1, 2013, a period of 33 weeks. Applying a "straight-line" calculation of 40 hours per week multiplied by the then minimum wage for each of the years in question the following damages are calculated:

Wages

[12] Testimony and evidence submitted by Ms. Reyes demonstrate that she started work before April 14, 2013. However, as with Ms. Green and Ms. Coviello, the calculation of Ms. Reyes's damages for wages and fees owed begins on April 14, 2013 based on the two year Statute of Limitations.

[13] As with the other plaintiffs who started work before the statute of limitations period, I conclude that the calculation of Ms. Ortiz's damages also begins on April 14, 2013.

2013
40 hours per week for 33 weeks at $8.25 per hour $10,890.00

House and DJ Fees

132 shifts worked with $50 in fees paid per shift $ 6,600.00

TOTAL DAMAGES: $17,490.00

Zuleyma Lopez

I conclude that based on the very limited evidence presented with respect to damages, Ms. Lopez is entitled to an award of $5,000.00.

Dalynna Seoung

I conclude that based on the very limited evidence presented with respect to damages, Ms. Seoung is entitled to an award of $5,000.00.

VI. Liquidated Damages

I decline to award double damages concluding that the record does not demonstrate that the defendants lacked a "good faith belief" that it was underpaying the plaintiffs.

VII. Attorneys' Fees and Costs

The FLSA (29 U.S.C. § 216(b)) and Connecticut law (Conn. Gen. Stat. § 31-72) permit the recovery of attorneys' fees. Neither body of law requires a showing of willfulness for an award of attorneys' fees. All that is required for recovery of attorneys' fees is a violation of wage and hour laws.

Accordingly, having found that the defendants are in violation of wage and hours laws, the plaintiffs are entitled to the recovery of their attorneys' fees and the costs related to bringing this action. Upon reviewing the affidavit of attorneys' fees submitted by plaintiffs' counsel and the supporting documents, I find counsel's time and hourly rate to be reasonable and award $85,000.00 in fees and $2,981.16 in costs.

VIII. Conclusion

A plaintiffs' award is entered in the amount of $113,560.75 plus attorneys' fees in the amount of $85,000.00 and costs of $2,981.16.

SO ORDERED.

Robert L. Holzberg, Judge (Ret.)
Arbitrator
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702
Tel: 860-424-4300